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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/618,096

Applicant(s)

HAMPL ET AL.

Examiner

MICHAEL J. FELTON

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-9, 12, 13, 16-27, 31-37, 39-45, 49-56, 58-61 and 64-70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-9, 12, 13, 16-27, 31-37, 39-45, 49-56, 58-61 and 64-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/11/2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. The applicants amendment indicating that the invention requires a wrapper or web of reconstituted tobacco has overcome the rejection under 35 USC § 112 found in the prior office action.
2. Applicant's arguments filed 10/07/2008 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner believes that one of ordinary skill would understand that, although hydrated ferric oxide is not disclosed as an oxygen storage and donor metal oxide oxidation catalyst, this does not mean that it is not capable of use as such. One of ordinary skill would not take the compounds disclosed by Snaird as being the only catalysts that could be used. For instance Snaird teaches that oxides of iron are preferred, but that a wide range of oxides may be used as well as precursors (col.8, 19-36). Lewton and Heim clearly teach the use oxyhydrates and hydrated ferric oxide for the same purpose (to control

CO) as the invention of Snaidr. Therefore, the examiner is not persuaded that one of ordinary skill would not have found it obvious to use hydrated ferric oxide in the cigarette paper. The applicant also states that the chemistry of Snaidr is completely unrelated to that of Lewton and Heim, however, there is no evidence presented as to how the chemistry is different.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 4-9, 12, 13, 16-21, and 23-26, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewton (US 2,003,690) in view of Heim et al. (US 4,193,412) and Snaidr et al. (US 6,799,578, also US 2002/0062834).
3. Regarding claim 1, Lewton discloses the using iron pigments that contain hydrated ferric oxide to control carbon monoxide as a cigarette additive and reducing the carbon monoxide by 30% (page 2, col. 2, 20-25). Heim et al. disclose the use of metal oxides, oxyhydrates, and hydroxides to treat the toxic substances found in cigarette smoke (col. 1, 41-51; col. 2, 3-12). Hydrated ferric oxide is a metal oxyhydrate. Heim et al. disclose using 10% by weight of tobacco, as well as using the compound in the filter at 3% by weight of the filter. Each of these percentages would be higher when compared to the weight of the wrapper (which is lighter than the tobacco or filter). It would have been obvious to one of ordinary skill in the art at the time of invention to use the hydrated ferric oxide of Lewton in the amounts specified by Heim et

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al., because Heim et al. teaches the use of metal oxyhydrates in general, of which hydrated ferric oxide is one example.

4. Neither Lewton nor Heim et al. teach the addition of metal oxyhydrates in the cigarette wrapper. In the instant application, there are two separate possible interpretations for the term "wrapper". The first interpretation is that a wrapper is a cigarette paper. In this interpretation, Snaidr et al. discloses a low sidestream smoke cigarette that uses an oxygen storage and donor metal oxide oxidation catalyst carbon monoxide reducing agent, such as iron oxide and precursors of metal oxides (col. 8, 19-36) in the wrapper and/or column of smokable filler (abstract). Snaidr also indicates that oxidation catalysts have been applied to cigarette paper in the prior art to remove undesirable combustion products (col. 2, 58-67). It would have been obvious to one of ordinary skill in the art at the time of invention that sidestream smoke could be treated to remove undesirable components through the addition of catalysts such as the metal oxides disclosed by Lewton and Heim et al., to the cigarette wrapper as disclosed Snaidr et al. The motivation, to reduce sidestream smoke, is provided by Snaidr et al., and the catalysts of Lewton and Heim et al. would have been known to be oxygen storage and donor metal oxide oxidation catalyst. This type of catalyst is the same type specified in the disclosure of Snaidr et al., allowing one of ordinary skill to use the catalysts of Lewton and Heim et al. in the invention of Snaidr et al.

5. The second interpretation for the term "wrapper" is that the wrapper is a web of reconstituted tobacco that surrounds a tobacco column as is typical in some brands of cigarettes. In this arrangement, it would have been obvious to one of ordinary skill in

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the art at the time of invention to apply the catalyst of Lewton and Heim et al. to the reconstituted tobacco. It would have been obvious because treatments for reconstituted tobacco are similar to treatments of tobacco filler and one of ordinary skill would have understood that catalysts such as those of Lewton and Heim et al., as well as other catalysts used in cut tobacco filler, could be used in reconstituted tobacco to perform the same function.

6. Claim 1 recites the function language, "in an amount sufficient to reduce carbon monoxide delivery in mg per smoking article by at least 10%." A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

7. Regarding claim 4, Heim et al. disclose using metal oxide hydrate with a particle size of 300nm. It would be obvious to use ferric oxide hydrate with a similar size range. Particle size, and the related parameter of surface area lack criticality. Hemi et al. states, "reduction of toxic components, in the tobacco smoke is not attributable to an especially high or especially low specific surface of the used additives..." (col. 6, 31-36). The applicant also indicates the lack of criticality, stating, "In general, the particle size of the carbon monoxide reducing agent is not believed to be critical," (page 11, 24-30).

8. Regarding claim 5, Heim et al. disclose using 10% by weight of tobacco, as well as using the compound in the filter at 3% by weight of the filter. Each of these

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percentages would be higher when compared to the weight of the wrapper (which is lighter than the tobacco or filter).

9. Regarding claim 7-9 and 12, it is notoriously well known that cigarettes can be made using tobacco filler, reconstituted tobacco, or reconstituted tobacco sheets surrounding tobacco filler. It would have been obvious that any additive for cigarettes could be used in any of these typical cigarette embodiments.

10. Regarding claim 13, as discussed above, Snaird et al. disclose a cigarette wrapper containing an oxygen storage and donor metal oxide oxidation catalyst (which is a carbon monoxide reducing agent) and do not require the addition of catalyst to the tobacco filler.

11. Claims 27, 31-35, 37, and 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewton (US 2,003,690) in view of Heim et al. (US 4,193,412) and Snaird et al. (US 2002/0062834).

12. Regarding claim 27, Lewton discloses the using iron pigments that contain hydrated ferric oxide to control carbon monoxide as a cigarette additive and reducing the carbon monoxide by 30% (page 2, col. 2, 20-25). Heim et al. disclose the use of metal oxides, oxyhydrates, and hydroxides to treat the toxic substances found in cigarette smoke (col. 1, 41-51; col. 2, 3-12). Hydrated ferric oxide is a metal oxyhydrate. Heim et al. disclose using 10% by weight of tobacco, as well as using the compound in the filter at 3% by weight of the filter. Each of these percentages would be higher when compared to the weight of the wrapper (which is lighter than the tobacco or

filter). It would have been obvious to one of ordinary skill in the art at the time of invention to use the hydrated ferric oxide of Lewton in the amounts specified by Heim et al., because Heim et al. teaches the use of metal oxyhydrates in general, of which hydrated ferric oxide is one example.

13. Heim et al. disclose changing the amounts of additives to obtain different reductions in gaseous components of cigarettes and Lewton discloses a 30% reduction of carbon monoxide output from a cigarette. It would have been obvious to reduce the amount of carbon monoxide output from a smoking article to a point lower than 15 mg per smoking article, or a carbon monoxide to tar ratio less than 1.0.

14. Neither Lewton nor Heim et al. teach the addition of metal oxyhydrates in the cigarette wrapper. In the instant application, there are two separate possible interpretations for the term "wrapper". The first interpretation is that a wrapper is a cigarette paper. In this interpretation, Snaidr et al. discloses a low sidestream smoke cigarette that uses an oxygen storage and donor metal oxide oxidation catalyst carbon monoxide reducing agent in the wrapper and/or column of smokable filler (abstract). Snaidr also indicates that oxidation catalysts have been applied to cigarette paper in the prior art to remove undesirable combustion products (col. 2, 58-67). It would have been obvious to one of ordinary skill in the art at the time of invention that sidestream smoke could be treated to remove undesirable components through the addition of catalysts such as the metal oxides disclosed by Lewton and Heim et al., to the cigarette wrapper as disclosed Snaidr et al. The motivation, to reduce sidestream smoke, is provided by Snaidr et al., and the catalysts of Lewton and Heim et al. would have been known to be

oxygen storage and donor metal oxide oxidation catalyst. This type of catalyst is the same type specified in the disclosure of Snaidr et al., allowing one of ordinary skill to use the catalysts of Lewton and Heim et al. in the invention of Snaidr et al.

15. The second interpretation for the term "wrapper" is that the wrapper is a web of reconstituted tobacco that surrounds a tobacco column as is typical in some brands of cigarettes. In this arrangement, it would have been obvious to one of ordinary skill in the art at the time of invention to apply the catalyst of Lewton and Heim et al. to the reconstituted tobacco. It would have been obvious because treatments for reconstituted tobacco are similar to treatments of tobacco filler and one of ordinary skill would have understood that catalysts such as those of Lewton and Heim et al., as well as other catalysts used in cut tobacco filler, could be used in reconstituted tobacco to perform the same function.

16. Claim 27 recites the function language, "in an amount sufficient to reduce carbon monoxide delivery in mg per smoking article by at least 10%." A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

17. Regarding claim 31, Heim et al. disclose using 10% by weight of tobacco, as well as using the compound in the filter at 3% by weight of the filter. Each of these percentages would be higher when compared to the weight of the wrapper (which is lighter than the tobacco or filter).

18. Regarding claims 32-35, the prior art, as disclosed by Heim et al. and Lewton reduce the carbon monoxide output of the cigarette during smoking. Because there is no patentable difference between the prior art and what is claimed in claim 1, the inventions of Heim et al. and Lewton would inherently reduce the carbon dioxide delivery to the amounts claimed, as they are within the scope of claim 1 and specify no structural limitation different than that of Heim et al. and Lewton.

19. Claims 32-35 recite only the function language, "wherein the smoking article has a carbon monoxide delivery of less than about X" or "wherein the smoking article has an average carbon monoxide delivery per puff of less than about Y." A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

20. Regarding claims 32-35, it would have been obvious to change the amount of carbon monoxide reducing material to obtain various amounts of carbon monoxide because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA). In addition, Heim et al. disclose changing the amounts of additives to obtain different reductions in gaseous components of cigarettes and Lewton discloses a 30% reduction of carbon monoxide output from a cigarette.

21. Regarding claim 37, 40, and 41, it is notoriously well know that cigarettes can be made using tobacco filler, reconstituted tobacco, or reconstituted tobacco sheets

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surrounding tobacco filler. It would have been obvious that any additive for cigarettes could be used in any of these typical cigarette embodiments.

22. Regarding claim 39, as discussed above, Snaird et al. disclose a cigarette wrapper containing an oxygen storage and donor metal oxide oxidation catalyst (which is a carbon monoxide reducing agent) and do not require the addition of catalyst to the tobacco filler.

23. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lewton (US 2,003,690), Snaird et al. (US 2002/0062834), and Heim et al. (US 4,193,412) as applied to claims 1 and 27 above. Lewton and Heim et al. do not disclose the process process step of incorporating a carbon monoxide reducing agent into a cigarette, however, this process is inherently performed to make the product of either Lewton or Heim et al. as both contain a carbon monoxide reducing agent that was not part of the typical cigarette ingredients. The product limitations in claim 45 are the same as the limitations in claim 27, which was rejected as obvious over Lewton, Snaird et al., and Heim et al.

24. Claims 22, 36, 49-56, 58, 60, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewton (US 2,003,690) in view of Heim et al. (US 4,193,412), Snaird et al. (US 2002/0062834) and Hampl, Jr. (US 4,793,775).

25. Regarding claims 22, 36, and 49, Lewton discloses the using iron pigments that contain hydrated ferric oxide to control carbon monoxide as a cigarette additive and

reducing the carbon monoxide by 30% (page 2, col. 2, 20-25). Heim et al. disclose the use of metal oxides, oxyhydrates, and hydroxides to treat the toxic substances found in cigarette smoke (col. 1, 41-51; col. 2, 3-12). Hydrated ferric oxide is a metal oxyhydrate. Heim et al. disclose using 10% by weight of tobacco, as well as using the compound in the filter at 3% by weight of the filter. Each of these percentages would be higher when compared to the weight of the wrapper (which is lighter than the tobacco or filter). It would have been obvious to one of ordinary skill in the art at the time of invention to use the hydrated ferric oxide of Lewton in the amounts specified by Heim et al., because Heim et al. teaches the use of metal oxyhydrates in general, of which hydrated ferric oxide is one example.

26. Heim et al. disclose changing the amounts of additives to obtain different reductions in gaseous components of cigarettes and Lewton discloses a 30% reduction of carbon monoxide output from a cigarette. It would have been obvious to reduce the amount of carbon monoxide output from a smoking article to a point lower than 15 mg per smoking article, or a carbon monoxide to tar ratio less than 1.0.

27. Neither Lewton nor Heim et al. teach the addition of metal oxyhydrates in the cigarette wrapper. In the instant application, there are two separate possible interpretations for the term "wrapper". The first interpretation is that a wrapper is a cigarette paper. In this interpretation, Snaidr et al. discloses a low sidestream smoke cigarette that uses an oxygen storage and donor metal oxide oxidation catalyst carbon monoxide reducing agent in the wrapper and/or column of smokable filler (abstract). Snaidr also indicates that oxidation catalysts have been applied to cigarette paper in the

prior art to remove undesirable combustion products (col. 2, 58-67). It would have been obvious to one of ordinary skill in the art at the time of invention that sidestream smoke could be treated to remove undesirable components through the addition of catalysts such as the metal oxides disclosed by Lewton and Heim et al., to the cigarette wrapper as disclosed Snaidr et al. The motivation, to reduce sidestream smoke, is provided by Snaidr et al., and the catalysts of Lewton and Heim et al. would have been known to be oxygen storage and donor metal oxide oxidation catalyst. This type of catalyst is the same type specified in the disclosure of Snaidr et al., allowing one of ordinary skill to use the catalysts of Lewton and Heim et al. in the invention of Snaidr et al.

28. The second interpretation for the term "wrapper" is that the wrapper is a web of reconstituted tobacco that surrounds a tobacco column as is typical in some brands of cigarettes. In this arrangement, it would have been obvious to one of ordinary skill in the art at the time of invention to apply the catalyst of Lewton and Heim et al. to the reconstituted tobacco. It would have been obvious because treatments for reconstituted tobacco are similar to treatments of tobacco filler and one of ordinary skill would have understood that catalysts such as those of Lewton and Heim et al., as well as other catalysts used in cut tobacco filler, could be used in reconstituted tobacco to perform the same function.

29. Claim 1 recites the function language, "in an amount sufficient to reduce carbon monoxide delivery in mg per smoking article by at least 10%." A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the

prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

30. Lewton and Heim et al. do not disclose details of the wrapper, however, wrappers with areas of lower permeability are well known in the art. Hampl Jr. discloses a wrapper with lower permeability areas with a BMI of 0-4 cm⁻¹. It would have been obvious to one of ordinary skill in the art at the time of invention to use the wrapper of Hampl Jr. with the inventions of Heim et al. and Lewton because Heim et al. and Lewton use wrappers (as do all cigarettes) and the disclosure of Hampl Jr. would make cigarettes safer for users by reducing the likelihood of starting accidental fires.

31. Regarding claims 50-56, the prior art, as disclosed by Heim et al. and Lewton reduce the carbon monoxide output of the cigarette during smoking. Because there is no patentable difference between the prior art and what is claimed in claim 1, the inventions of Heim et al. and Lewton would inherently reduce the carbon dioxide delivery to the amounts claimed, as they are within the scope of claim 1 and specify no structural limitation different than that of Heim et al. and Lewton.

32. Claims 50-56 recite only the function language, "wherein the smoking article has a carbon monoxide delivery of less than about X" or "wherein the smoking article has an average carbon monoxide delivery per puff of less than about Y." A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

33. Regarding claims 50-56, it would have been obvious to change the amount of carbon monoxide reducing material to obtain various amounts of carbon monoxide because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA). In addition, Heim et al. disclose changing the amounts of additives to obtain different reductions in gaseous components of cigarettes and Lewton discloses a 30% reduction of carbon monoxide output from a cigarette.

34. Regarding claim 58, Heim et al. disclose using 10% by weight of tobacco, as well as using the compound in the filter at 3% by weight of the filter. Each of these percentages would be higher when compared to the weight of the wrapper (which is lighter than the tobacco or filter).

35. Regarding claims 60 and 61, it is notoriously well known that cigarettes can be made using tobacco filler, reconstituted tobacco, or reconstituted tobacco sheets surrounding tobacco filler. It would have been obvious that any additive for cigarettes could be used in any of these typical cigarette embodiments.

36. Regarding claims 64-67, 69, and 70. Hampl Jr. discloses lower permeability ($0-4 \text{ cm}^{-1} \text{ BMI}$) bands on the wrapper that are perpendicular or parallel to an axis on the cigarette (figure 1), where the bands are made with cellulosic compositions or pieces of fibrous web in association with the wrapper (col. 1, 53-68). Please note the phrase "an axis" does not indicate any particular axis (for instance the longitudinal axis) of the cigarette.

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37. Claims 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewton (US 2,003,690), Snaidr et al. (US 2002/0062834), and Heim et al. (US 4,193,412) as applied to claim 27 above, in further view of Mathews et al. (US 4,622,983). Lewton and Heim et al. do not disclose the wrapper porosity. Mathews et al. disclose in example 5, a wrapper with permeability of 55 cm/min (CORESTA), a basis weight of 24 grams per meter squared, and a filler of 30% calcium carbonate. It would have been obvious to one of ordinary skill in the art at the time of invention to use the wrapper of Mathews et al. to wrap the inventions of Lewton and Heim et al. as the inventions of Lewton and Heim et al. require wrappers.

38. Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lewton (US 2,003,690), Snaidr et al. (US 2002/0062834), Heim et al. (US 4,193,412), and Hampl, Jr. (US 4,793,775) as applied to claim 49 above, in further view of Mathews et al. (US 4,622,983). Lewton, Heim et al., and Hampl Jr. do not disclose the wrapper porosity. Mathews et al. disclose in example 5, a wrapper with permeability of 55 cm/min (CORESTA), a basis weight of 24 grams per meter squared, and a filler of 30% calcium carbonate. It would have been obvious to one of ordinary skill in the art at the time of invention to use the wrapper of Mathews et al. to wrap the inventions of Lewton and Heim et al. as the inventions of Lewton and Heim et al. require wrappers.

39. Claim 68 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lewton (US 2,003,690), Snaidr et al. (US 2002/0062834), Heim et al. (US 4,193,412) and

Hampf, Jr. (US 4,793,775) as applied to claim 64 above in further of Hotaling et al. (US 5,820,998 and EP 671505 A). Lewton, Heim et al. and Hampf Jr. do not disclose a film based lower permeability area, however, Hotaling et al. disclose a polymer coating (film) coating a paper to reduce permeability of the paper (abstract). It would have been obvious to one of ordinary skill in the art at the time of invention to use the coating of Hotaling et al. to construct bands to provide self-extinguishing capability to the cigarettes of Lewton, Heim et al., and Hampf Jr. because self-extinguishing capabilities make cigarettes safer.

Conclusion

40. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. FELTON whose telephone number is

(571)272-4805. The examiner can normally be reached on Monday to Friday, 7:30 AM to 4:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Phillip C. Tucker can be reached on 571-272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Philip C Tucker/

Supervisory Patent Examiner, Art Unit 1791